

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PHYTO TECH CORP. D/B/A BLUE
CALIFORNIA,

Plaintiff,

v.

GIVAUDAN, SA,

Defendant.

Case No. 1:19-cv-09033-JGK

**LIQUIDATING TRUSTEE’S MOTION FOR LIMITED STAY OF ORDER
APPROVING LIQUIDATING TRUSTEE’S FINAL REPORT AND GRANTING
MOTION FOR APPROVAL OF THE TRUSTEE’S PROPOSED WIND UP
AND DISSOLUTION OF BGN TECH, LLC**

Andrew De Camara (the “Trustee”) hereby moves (this “Motion”) this Court for entry of an Order, substantially in the form of the proposed order attached hereto as **Exhibit A** (the “Proposed Order”), granting a limited stay pursuant to Section 8(a)(1)(A) of the Federal Rules of Appellate Procedure and Section 62(b) of the Federal Rules of Civil Procedure with respect to certain portions of the *Order Approving Liquidating Trustee’s Final Report and Granting Motion for Approval of the Trustee’s Proposed Wind Up and Dissolution of BGN Tech, LLC* [Dkt. No. 100] (the “Approval Order”), and respectfully states as follows in support hereof:

1. On September 27, 2019, Phyto Tech Corp. d/b/a Blue California (“Blue Cal”) filed the above-captioned action seeking the appointment of a liquidating trustee pursuant to 6 Del. C. § 18-803 to wind up the affairs of BGN Tech, LLC (“BGN”), a limited liability company with members, Blue Cal and Givaudan SA (“Givaudan”).

2. On January 28, 2020, the Court entered the *Order Regarding Appointment of Liquidating Trustee* [Dkt. No. 44] appointing the Trustee to wind up BGN.

3. On August 5, 2022, the Trustee filed the *Liquidating Trustee's Final Report and Motion for Approval of the Trustee's Proposed Wind Up and Dissolution of BGN Tech* [Dkt. No. 85] (the "Final Report and Approval Motion"). Following additional briefing, the Court entered the Approval Order, which granted the Final Report and Approval Motion, on November 21, 2022.

4. The Approval Order, among other things, provides that, effective immediately upon its entry, the Trustee is relieved and discharged from any further obligations with respect to BGN, provided that the Trustee is authorized to continue to take administrative actions necessary to complete the wind down and dissolution of BGN. (*See* Approval Order at §§ 4-5.)

5. On December 21, 2022, 2022, Givaudan filed a *Notice of Appeal* [Dkt. No. 103], providing notice of its appeal (the "Appeal") of the Approval Order and the affiliated *Memorandum Opinion and Order* [Dkt. No. 101] to the United States Court of Appeals for the Second Circuit.

6. Due to the filing of the Appeal, the Trustee seeks, pursuant to Section 8(a)(1)(A) of the Federal Rules of Appellate Procedure and Section 62(b) of the Federal Rules of Civil Procedure, the entry of the Proposed Order granting a limited stay of the Approval Order solely with respect to paragraphs 4 and 5 of the Approval Order, so that the Trustee's appointment may continue during the pendency of the Appeal. Staying these portions of the Approval Order will allow the Trustee to defend the Approval Order and otherwise continue to assert and protect his interests and those of BGN in connection with the Appeal. No party will be prejudiced by the limited stay of the Approval Order so that the Trustee may take these actions.

7. The Trustee further requests a waiver of the requirement to file a bond or otherwise post security in connection with the limited stay of the Approval Order requested in this Motion.

WHEREFORE, the Trustee respectfully requests entry of an Order, substantially in the form of the Proposed Order, (i) granting this Motion, (ii) approving a limited stay of the Approval Order as set forth herein, and (iii) waiving any requirement to post a bond or other security in connection with such limited stay.

Dated: January 3, 2023

Respectfully submitted,

/s/David A. Crichlow

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Counsel for the Trustee

Certificate of Service

I hereby certify that on January 3, 2023, I electronically filed the foregoing with the Clerk of the United States District Court, Southern District of New York using the CM/ECF system, which would then electronically notify all CM/ECF participants on this case.